IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.1626 of 1989

Shri Shahu Chhatrapati Sahakari
Sakhar Karkhana Ltd. Petitioner
Vs.
Sakhar Kamgar Sabha & anr. Respondents

With
Writ Petition NO.3381 of 1989

Sakhar Kamgar Sabha Petitioner
Vs.
Shri Shahu Chhatrapati Sahakari
Sakhar Karkhana Ltd. & anr. Respondents

Mr.A.V.Bukhari and Mr.Abhay Nevagi with Mr.B.A. Bukhari for Karkhana.

Mr.K.S.Bapat for Kamgar Sabha.

CORAM: B.H.MARLAPALLE,J.

August 19, 2006.

ORAL JUDGMENT:

1. Both these petitions assail the reasonableness, justifiability and fairness of the award passed by the learned Member of the Industrial Court at Kolhapur in Reference (IC) No.17 of 1985 on 12/12/1988 and hence they are being decided by a common judgment.

2. The Respondent-Union in the first petition i.e. Sakhar Kamgar Sabha had submitted a notice of change on 19/6/1984 and claimed for implementation of

the recommendations of the Central Wage Board for Sugar Industry as well as the independent Committee constituted by the State Government viz. Shri Shankarrao Patil Committee. There is no dispute that the Karkhana had implemented the recommendations of the Second Wage Board from 1/11/1982 and the recommendations of the Patil Committee from 1/5/1983. It is also admitted that the Karkhana had started sugar production from 17th November 1980. The Management, therefore, did not respond to the demands submitted by the Union and consequently the following demands came to be referred for adjudication by the State Government:

(1) Designations as per work shall be given to the workers working in respective departments of the Karkhana.

(2) The pay-scale as per the Second Central Wage Board shall be made applicable to the workers in respective departments, as per their designation, from the date Karkhana started manufacturing sugar i.e. from the date 17/11/1980.

(3) Pay-scale as per the recommendations of Hon'ble Shankarrao Bajirao Patil, shall be made applicable to all the workers working in the Karkhana.

(4) After making all the aforesaid recommendations applicable, implementation shall be made with effect from 17/11/1980 and previous difference shall be paid immediately.

3. So far as the first demand is concerned the learned Member of the Industrial Tribunal was pleased to reject the same and regarding other three demands the impugned award directs in para 24 as under:

"For the reasons mentioned above, I hereby direct that the Second party Karkhana should pay the employees a half of the amount of the benefits of the recommendations from 1/12/1980 to 30/4/1983 within six months from the date of the publication of the Award."

. It is thus clear that the direction is only in respect of the recommendations of the Patil Committee Report and it does not refer to the Second Wage Board

recommendations which have been implemented by the Karkhana from 1/11/1982. It appears that the learned Member of the Industrial Tribunal noted the fact that the sugar production started on 17/11/1980 and, therefore, he thought it appropriate to bring into force the Patil Committee Recommendations from 1/12/1980.

4. The Respondent-Union does not appear to be happy and, therefore, it has filed Writ Petition No.3381 of 1989 and prayed to quash and set aside the impugned award and direct the Karkhana to pay at the full rate of the recommendations made by the Patil Committee from 1st December 1980 to 30th April 1983 and pay the arrears forthwith. The Union, any case, does not dispute that the Patil Committee recommendations could be made applicable from 1st December 1980 as far as the petitioner-Karkhana is concerned but claims the said benefit at full rate. In these obtaining circumstances the following two issues arise for considerations;

(a) Whether the Industrial Court was justified in directing to pay to all the employees half of the amount of the benefits of the Patil Committee recommendations from

1/12/1980 to 30/4/1983 more so when the Petitioner - Karkhana was in the infancy stage and its financial condition was poor during the relevant period, and

(b) whether the Industrial Tribunal was justified in denying 50 % of the benefits of the Patil Committee recommendations for the period from 1/12/1980 to 30/4/1983.

5. It was submitted by Mr.Bukhari, the learned counsel appearing for the petitioner - Karkhana that when the notice of change was admittedly given on 19/6/1984 the award passed by the Court could not have been retrospective in asmuchas it could not have been made applicable from any date prior to 19/6/1984 and when the Karkhana itself had implemented the Patil Committee recommendations from 1/5/1983 there was no question of considering the demand by the Industrial Tribunal. In support of these submissions he has relied upon the following decisions:

. (1) The Workmen of Shri Bajrang Jute Mills Ltd. vs. The Employers of Shri Bajrang Jute Mills Ltd. **[1970 II LLJ 6]**; (2) M/s. Cox & Kings

(Agents) Ltd. vs. Their Workmen **[AIR 1977 SC 1666]** and (3) The Management of Shri Chalthan Vibhag Khand Udyog Sahakari Mandli Ltd. v. G.S.Barot and anr. **AIR 1980 SC 31]**.

. In fact a Division Bench of this Court in the case of Bharat Cotton Growers' Co-operative Spinning Mills Ltd., Sangli Vs. Miraj Taluka Girni Kamgar Sangh & ors. **[1979 I LLJ 487]** had considered the very same issue and after referring to the decisions of the Supreme Court in the case of Jhagarakhand Collieries (P) Ltd. & anr. v. Central Government Industrial Tribunal, Dhanbad & ors. **[1960 II LLJ 71]** and M/s.Cox & Kings (Supra), stated thus:

> "4. The short question, therefore, for our decision in this petition is whether having regard to the admitted facts that the demand itself was made by a notice of change dated May 24, 1971, the Tribunal was justified in directing the payment of dearness allowance from a date prior to it, viz., from August 1, 1970. Undoubtedly, under sub-s. (2) of S.42 of the Bombay Industrial Relations Act, 1946, a notice of change has got to be given by the

employees desiring a change. It is true that in the notice purporting to have been issued under the said Section on May 24, 1971, the workmen have demanded that the relief of dearness allowance should be given to them from August 1, 1970. It is also true that the Tribunal has, in fact, held that effective production did commence from July 4, 1970 and, therefore, the Tribunal acceded to the request of the workmen. In the instant case, the date of demand itself is made on May 24, 1971. Therefore, when the Tribunal found from the facts of this case that the petitioner-society was in a financial position to meet the demand, the Tribunal was perfectly justified in effecting that change or giving effect to that demand from the date of that notice of demand from May 24, 1971. How, simply because, as is urged by Mr.Sowani, in that notice the workmen have made a demand that they should be given the benefit from August 1, 1970, it could not be said that that date is the date of the demand or change contemplated under S.42 of the Bombay Industrial Relations Act, 1946. That, in

> fact, is the demand but that should not be confused with the date of demand. The date of demand would be the date when such a demand is made by notice of change and it should not be confused with a date from which a demand may be made in the notice of change or notice of demand. We are, therefore, not impressed with the submission of Mr.Sowani that because in the demand notice or notice of change dated May 24, 1971 the workmen had demanded the reliefs from August 1, 1970, the Tribunal had jurisdiction to do so and was justified in doing so."

6. The second issue argued by Mr.Bukhari pertains to the financial condition of the Karkhana and its infancy stage. As noted earlier the Karkhana started production on 17/11/1980 and the period in dispute for the implementation of the Shankarrao Patil Committee is, therefore, from 1/12/1980 to 30/4/1983 i.e. two years and five months. The balance sheets for the year ended on 30th June 1980, 30th September 1981, 30th September 1982 and 30th September 1983 as well as 30th September 1984 have been placed on

record. Before the Industrial Court the Union had examined two witnesses viz. Shri Shamrao Gopal More, who is the General Secretary and Mr.B.T.Bhosale whereas the Karkhana had examined Shri P.R. Shah, In-charge Managing Director and Shri P.G. Diwan, the Chartered Accountant. It was contended by the Management before the Industrial Court that if the financial demands as referred to the Tribunal for adjudication were allowed, it would be required to take additional burden of Rs.30 to 35 lacs and looking to the financial condition of the Karkhana it was impossible for it to undertake such a burden. As the period under dispute is from 30/12/1980 to 30/4/1983 let us consider the performance of the Karkhana as reflected in the balance sheet for the years ended 30th September 1981, 30th September 1982 and 30th September 1983.

. The first year balance sheet shows a gross profit of Rs.70,17,294-33 and in addition interest received Rs.56,695-30 whereas the net loss came to Rs.1,12,057-70. Depreciation on manufacturing assets was claimed at Rs.40,71,698-24 and deferred revenue expenses were shown at Rs.20,72,500-00. In the next year the trading profit was shown at

Rs.1,39,83,081-66, interest received Rs.1,55,004-91 and net loss was shown at Rs.5,77,907-42 whereas the depreciation claimed was Rs.59,42,850/- and in the third year the trading profit is shown at Rs.1,81,27,921-65 whereas the net loss has been shown at Rs.61,986-26. The depreciation of manufacturing assets was claimed at Rs.55,74,488/-.

7. If the performance of the Karkhana as reflected in these balance sheets is considered it shows that the income was more than expenditure but the interest liability of the bank and the payment of taxes as well as the depreciation reserve claim were the factors which, on taking into consideration, had shown net loss. For example in the last year interest on long term loan and on working capital itself was at Rs.1,00,63,658-27 and the total expenditure in the same year came to Rs.1,50,20,450.46 as against the receipts of Rs.1,84,73,072-59 whereas in the earlier year the total expenditure was at Rs.1,06,28,882-57 whereas the receipts were at Rs.1,47,34,781-95. The expenditure that is considered is that of recurring liabilities like interest, bank commission, salaries and wages, travelling expenses and so on whereas the

receipts shown are tradeing profit, interest received, dividends paid and deferred revenue expenses etc. While calculating the trading profit it is noted that the balance sheet has considered the expenditure incurred on procurement of sugar cane and income received or derived from the sale of sugar. The financial performance of the Karkhana thus does not show prosperity and obviously so because these were the years of its infancy stage but at the same time it does not show that it was in a precarious financial condition and in any case the Karkhana implemented the Patil Committee recommendations from 1/5/1985 and, therefore, it could not rely upon its financial conditions or infancy stage to continue the said benefits from 1/12/1980 onwards. The Industrial Court also noted that the Karkhana gave higher price than any other Karkhana in the district to the sugarcane it procured.

8. Now let us come to the legal submissions made by Mr.Bukhari regarding the benefits to be made applicable after the notice of change is given i.e. from 19/6/1984 onwards. The position in law is well established and the same supports the argument of Mr.Bukhari. However, the legal position will have to

be considered on the facts of this case and not in general. The issue is regarding the implementation of the Patil Committee recommendations and not any other demand raised by the Union. It will be, therefore, necessary to take into consideration the background of the constitution of the Patil Committee and the decision taken by the State Government while constituting the said Committee. It appears that after the Second Wage Board recommendations were declared a charter of demand was submitted to the Hon'ble Chief Minister on 1st November 1979 by the Pratinidhi Mandal and on 26th November 1979 the Hon'ble Chief Minister had given an award in respect of some of the demands and on the remaining demands the parties were at loggerheads. The Minister for Labour, Maharashtra State held a series of meetings with the representatives of the employers and employees in October 1980 and an agreement was reached between the parties to constitute a committee with equal representation to the employers and the unions and it is resulted in the agreement dated 30th October 1980. On 1st December 1980 the Government of Maharashtra issued a G.R. constituting a Committee under the Chairmanship of Shri Shankarrao Bajirao Patil, the then Member of Parliament and three

members from each side. Thus the Committee consisted of seven members. Clause 4 of the said G.R. reads as under:

> "The Committee shall give its decision before the 28th February 1981. The decision shall be binding on employers, employees and their Organisations. If any decision of the Committee is not unanimous, the Chairman's decision shall be deemed to be the decision of the Committee and shall be binding on the employers, employees and their organisations. Any question which may arise in regard to the interpretation and application of any decision of the Committee shall be referred to the Chairman whose decision shall be final."

At the same time this Resolution constituting the Committee was in pursuance of the agreement dated 30th October 1980 and the Committee was required to give the decision before 28th February 1981. The Committee while giving its recommendations made the the same to be effective from 1st November 1980 in respect of some demands and from 1st November 1981 in respect of the remaining demands. Therefore, the

report will be binding on the petitioner-Karkhana as well and the impugned award has directed the recommendations to be implemented from 1/12/1980. It was not pointed out by leading evidence by the Karkhana that there were some demands which were effective from 1st November 1981 which involved direct monetary burden and it appears that the demands which were dealt with in the Committee's report and made effective from 1st November 1980 alone gave rise to the additional financial burden. The Tribunal in its discretion and after considering the respective arguments decided the date of implementation from 1/12/1980 and the view taken by the Tribunal is a possible view and, therefore, it cannot be termed as perverse or grossly erroneous so as to call for interference under Article 227 of the Constitution. The Industrial Court also noted that almost all the sugar factories in Kolhapur district had implemented the Patil Committee recommendations as directed therein.

9. The Union in its petition has shown its unhappiness on the directions given by the Industrial Tribunal regarding half of the amount of the benefits to be paid with effect from 1/12/1980 and it is the

Union's case that the full benefits were required to be given from 1/12/1980. The Tribunal considered the fact that the Karkhana was in the infancy stage and the balance sheets did not show any net profit during the relevant period. Though the financial condition was not precarious but at the same time it was difficult for the Karkhana to bear the additional burden of Rs.30 to 35 lakhs as per the Tribunal. It appears that during the course of adjudication of the demands both the parties were called upon to quantify the burden if 50 per cent of the benefits was directed to be extended to the workmen and it appears that the Management agreed to give such quantification but could not do so. On the other hand the General Secretary of the Union Mr.More who was examined had shown his agreement for the suggestion made by the learned Member of the Industrial Tribunal regarding 50 % benefits to be extended to the workmen. The Tribunal has taken an equitable view and directed that half of the amount of the benefits should be paid from 1/12/1980 and this appears to be a fair and just compromise between the parties. The Karkhana stated in its petition that as per the award impugned and passed by the Industrial Tribunal it would have to take an

additional burden of Rs.4 lakhs and it is clear that there are about 800 employees under the Karkhana and a large majority of them will be the beneficiaries of the impugned award. Hence I am satisfied that there is no case made out to review or revise upwardly the directions given by the Industrial Tribunal and the said directions make out a case of just, proper and fair adjudication of the grievance. Hence the challenge by the Union to the impugned award must also fail.

10. In the premises, both the petitions fail and they are hereby dismissed. Rule discharged. Interim order granted in Writ Petition No.1626 of 1989 is hereby vacated. The Karkhana will take steps to clear the arrears of payment as expeditiously as possible and preferably within a period of three months. No costs.

11. Mr.Bukhari makes an oral application to keep this order in abeyance. The oral application is hereby rejected.

(B.H.MARLAPALLE,J.)